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OFFICE OF PETITIONS

In re Application of	:	
BREINING et al.	:	DECISION ON APPLICATION
Application No. 10/711,969	:	FOR
Filed: October 15, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No. T103 1580.1	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT (37 C.F.R. §§ 1.705 and 1.18(e)," which is properly being treated as a petition under 37 CFR 1.705(b), filed May 19, 2008. Applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 500 days to 502 days.

The application for patent term adjustment is DISMISSED.

On March 10, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date was 500 days. On May 19, 2008, applicants timely submitted the instant application for patent term adjustment¹. Thereafter, on July 22, 2008, the above-identified application matured into Patent No. 7,402,592. The patent issued with a Patent Term Adjustment of 500 days.

Applicants dispute the reduction pursuant to 37 CFR 1.704(b) of 2 days for the filing of the response to the Restriction

¹ PALM records show that the Issue Fee was received on June 9, 2008.

Requirement. Applicants state that the patent issuing from this application is not subject to a terminal disclaimer.

A review of the application history supports a conclusion that the number of days adjusted for Office delay and the number of days reduced for applicants' delay is correct.

Applicants request the removal of the reduction of 2 days on the ground that the response was filed timely on July 31, 2007, within three months of the mail date of the Restriction Requirement. Applicants state that the response included a certificate of mailing dated July 31, 2007. Applicants assert that the filing date of the response on July 31, 2007, not the date of submission of August 3, 2007, should be used in calculating patent term adjustment.

A review of the application history reveals that applicants were properly assessed a delay of 2 days pursuant to 37 CFR 1.704(b). Calculation of applicants' delay is based on the date of receipt of the response in the Office. In this regard, applicants' attention is directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. Furthermore, as stated in Section 2731 of the Manual of Patent Examining Procedure:

The date indicated on a certificate of mailing is used only to determine whether the correspondence is timely (including whether any extension of the time and fee are required) so as to avoid abandonment of the application or termination or dismissal of proceedings. The actual date of receipt of the correspondence in the Office is used for all other purposes. See 37 CFR 1.8(a). Thus, while the date indicated on any certificate of mailing or transmission under 37 CFR 1.8 will continue to be taken into account in determining timeliness, the date of filing (37 CFR 1.6) will be the date used in a patent term adjustment calculation.

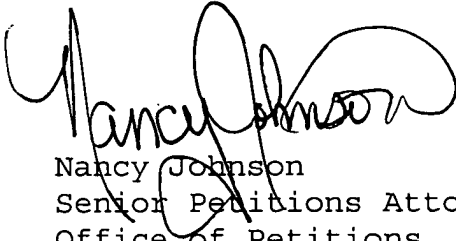
Applicants' response was received on August 3, 2007. Thus, the period of adjustment was properly reduced by 2 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the Restriction Requirement, August 2, 2007, and ending on the date the reply

was filed, August 3, 2007. As applicants failed to engage in reasonable efforts to conclude prosecution of the application, the period of reduction of 2 days is warranted and will not be removed.

In view thereof, the determination of patent term adjustment remains 500 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions